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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION**

KELSEY CASCADIA ROSE JULIANA, *et. al.*, Case No.: 6:15-cv-01517-TC

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

**DEFENDANTS' MOTION TO AMEND
PRETRIAL DEADLINES TO
EXCHANGE EXHIBIT LISTS,
SUBMIT EXHIBIT LISTS, AND TO
FILE OBJECTIONS TO EXHIBITS**

Defendants respectfully move to amend the pretrial schedule to extend the time—until October 12, 2018—for the Parties to exchange trial exhibit lists, and to extend the time—until October 19, 2018—for the Parties to submit to the Court exhibit lists and objections to exhibits.¹ This request is made for good cause as follows:

1. Prior to the August 27, 2018 status conference, the Parties never met and conferred as to the *dates* for exchanging exhibit lists, nor for the dates for filing exhibit lists and objections with the Court.² On the morning of Friday, August 24, 2018, undersigned counsel for Defendants contacted counsel for Plaintiffs by email to schedule a meet and confer to take place prior to the August 27 status conference. Decl. of Sean C. Duffy in Supp. of Mot. to Amend Pretrial Deadlines (“Decl.”), Ex. 4 (Defendants’ August 24, 2018 email). Counsel for Plaintiffs responded by email later that day with a proposed agenda for the status conference, including the item “Dates to serve” motions in limine, witness lists, and exhibit lists. Decl. ¶ 3, Ex. 2.
2. Counsel for Defendants responded by email on August 27, 2018, and proposed October 19 as the deadline for trial memoranda and October 22 for the pretrial conference. Decl. ¶ 4, Ex. 3. Neither party suggested nor discussed any additional dates prior to the August 27, 2018 status conference. Decl. ¶ 4.

¹ Pursuant to Local Rule 7-1(a), on September 20, the parties met and conferred as to the proposed amendments to the pretrial schedule. Plaintiffs oppose this request.

² The United States objects to these proceedings on the grounds that this case is improper for several jurisdictional and substantive reasons as set forth in its Motion to Dismiss (ECF No. 27), Motion for Judgment on the Pleadings (ECF No. 195), and Motion for Summary Judgment (ECF No. 207). The United States acknowledges that the Court has either disagreed with or not yet ruled on Defendants’ dispositive challenges, and therefore is participating in pretrial matters.

3. During the status conference, undersigned counsel for Defendants called in from Washington D.C., while the two additional Defendants' counsel who were also involved in scheduling matters called in remotely, and on separate lines. As a result, during the status conference, counsel for Defendants' were unable to confirm with each other as to whether additional dates had been agreed with Plaintiffs either over email or in face-to-face conversations when counsel met during depositions, which were then underway.
4. During the August 27 status conference, counsel for Plaintiffs proposed—for the first time, and without indicating to any counsel for Defendants that it would do so—that the Court order an October 1, 2018 deadline for exchanging exhibit lists. Decl. ¶ 6.
5. Undersigned counsel for Defendants orally agreed to the October 1 deadline for the exchange of exhibit lists, on the mistaken assumption that counsel for Defendants, who were dialing in remotely had agreed to such a deadline with Plaintiffs. This was an incorrect assumption: no such agreement had been made and indeed no discussion as to dates had been initiated. Decl. ¶ 7.
6. This Court issued a minute order following the August 27, 2018 status conference, which, *inter alia*, ordered the parties to exchange exhibit lists by October 1, 2018 and to file exhibit lists and objections to exhibits with the Court no later than October 15, 2018. Decl. Ex. 4, ECF No. 343 (Aug. 29, 2018 Minute Order).
7. The parties will be in no position to provide a meaningful or complete exhibit list by October 1, 2018, particularly given the number of depositions, scheduled for the first two weeks in October and the need for counsel to prepare for those depositions. Decl. ¶¶ 8-9.

8. There are currently no fewer than fourteen depositions scheduled to take place between Saturday, September 29, 2018 and October 23, 2018, including the deposition of Dr. James Hansen on October 1, 2018. Decl. ¶ 9. Preparing for those depositions is a time-consuming endeavor. Counsel for Defendants expect that numerous exhibits will be introduced during those depositions, and that some (or many) of those exhibits will be included on the exhibit lists that are exchanged and then submitted to the Court. Decl. ¶ 10.
9. On September 20, 2018, Defendants met and conferred with Plaintiffs regarding pretrial deadlines. Defendants explained that they had agreed to the October 1 deadline for the exchange of exhibit lists based on a mistaken assumption and will not be prepared to exchange exhibit lists on October 1, 2018 given the significant number of trial witnesses that will have not yet been deposed by that time. Defendants further explained that their exhibit list is likely to include many of the exhibits introduced during the forthcoming depositions. In addition, exhibits introduced during subsequent depositions may supplant earlier-used exhibits. Therefore, any list that the Parties provide on October 1 is likely to be very incomplete. By necessity, any list completed by that date would also be overly inclusive because it will have been submitted well before many depositions have concluded and counsel will have had an opportunity to then adequately prepare trial strategy.
10. In contrast, by October 12, nearly all of the outstanding expert depositions will have been completed. By exchanging exhibit lists on October 12, Defendants believe that they will provide an exhibit list that is more considered, more complete, and better tailored to trial.

11. And by submitting exhibit lists and objections to exhibits on October 19—rather than October 15—Defendants expect that the parties will have an adequate opportunity to review the opposing parties’ lists and to provide the Court with any objections before the October 23, 2018 pre-trial conference, during which the parties will be prepared to discuss “exhibits and witnesses” and “related objections and stipulations.” Decl., Ex. 4. Plaintiffs oppose this proposal to amend the pre-trial deadlines so that the parties exchange exhibit lists on October 12, 2018 and submit objections and exhibit lists on October 19, 2018.

For all of the foregoing reasons, Defendants respectfully request that the Court grant this motion to amend pretrial deadlines, and order the parties to exchange exhibit lists on October 12, 2018, and to submit objections and exhibit lists to the Court on October 19, 2018.

DATED: September 26, 2018

Respectfully submitted,

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/s/ Sean C. Duffy

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